Supreme Court, U.S.
FILED
JUL 23 1992
OFFICE OF THE CLERK

No. 91-7873

In The

Supreme Court of the United States

October Term, 1992

WILLIAM FEX,

Petitioner,

v.

MICHIGAN,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Michigan

JOINT APPENDIX

JOHN B. PAYNE, JR.*
(Appointed by this Court)
22374 Garrison Street
Dearborn, Michigan 48124
(313) 562-5440
Counsel for Petitioner

JERROLD SCHROTENBOER*
312 South Jackson Street
Jackson, Michigan 49201
(517) 788-4286
Counsel for Respondents

*Counsel of Record

Petition For Writ Of Certiorari Filed April 7, 1992
Certiorari Granted May 18, 1992

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RELEVANT DOCKET ENTRIES

COMPLAINT	12/8/87
INFORMATION FILED	11/23/88
ARRAIGNMENT	11/29/88
PRETRIAL	12/28/88
MOTION TO DISMISS VIOLATION OF INTERSTATE AGREEMENT	3/15/89
WRIT OF HABEAS CORPUS FILED	3/17/89
TRIAL	3/23/89
SENTENCING	4/20/89
NOTICE OF APPEAL FILED	7/11/91

COMBINATION CRIMINAL SET

STATE OF MICHIGAN
THE DISTRICT COURT – JUDICIAL DISTRICT NO. 12th
County of JACKSON **COMPLAINT** CASE NO. 88270FY

THE PEOPLE OF THE STATE OF MICHIGAN vs. WILLIAM FEX W/M DOB: 11/07/66 (Fort Wayne, Indiana Jail) 3555 Dalton Road Rives Junction, MI CTN: 3888-001421-01 JCPD #87-30607 Defendant(s)	Date of Offense On or about December 8, 1987 Location City of Jackson Complainant Det. Michael Rand Complaining Witness Det. Michael Rand

STATE OF MICHIGAN)
) ss.
County of JACKSON)

The above-named COMPLAINING WITNESS being duly sworn before the undersigned Judge, Magistrate, or Clerk of the District Court, upon the date indicated below, says that heretofore on the DATE OF OFFENSE listed above, at the LOCATION listed above in the said County, State of Michigan, the above-named Defendant(s),

COUNT I: did assault a certain person, to-wit: Lee J. Stapleton, while being armed with a dangerous weapon, or an article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon, to-wit: a gun, and did then and there feloniously rob, steal and take from the person of said victim, or in his/her presence certain property, to-wit: money; contrary to MCL. 750.529; MSA 28.797. [750.529]

COUNT II: did make an assault upon Lee J. Stapleton with a dangerous weapon, to-wit: a long gun, but without intending to commit the crime of murder or to inflict great bodily harm less than the crime of murder; contrary to MCL 750.82; MSA 28.277. [750.82].

COUNT III: did carry or have in his/her possession a firearm, to-wit: a long gun, at the time he/she committed or attempted to commit a felony, to-wit: armed robbery and/or assault with a dangerous weapon; contrary to MCL 750.227b; MSA 28.424(2). [750.227B-A]

WARRANT AUTHORIZED BY
/s/ Jerard M. Jarzynka
P35496 Assistant Prosecuting Attorney
contrary to the form of the statute in such case made and provided, etc.

WHEREFORE, the said Complaint prays that the said Defendant(s) may be apprehended and held to answer this Complaint and further dealt with in relation to the same as law and justice may require.

Dated February 29, 1988
No. _____

Subscribed and Sworn to on this day by
/s/ Michael Rand
Complaining Witness

/s/ James M. Justin
Before the above-named
District Judge/Deputy
Clerk/Magistrate

Agreement on Detainers: Form I

IN DUPLICATE, ONE COPY OF THIS FORM, SIGNED BY THE PRISONER AND HE WARDEN SHOULD BE RETAINED BY THE WARDEN. ONE COPY, SIGNED BY THE WARDEN SHOULD BE RETAINED BY THE PRISONER.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

Inmate *William Fex* No. *883595* Inst. *Westville Correctional Center*

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

Cause 88-270 FY Armed Robbery
Assault with a Deadly Weapon
Felon in Possession of a Firearm

You are hereby further advised that by the provision of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provision of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the

court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify G. Michael Broglin, Superintendent of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody

t/but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery. You are also statutorily entitled to the procedural protections provided in state extradition laws.

DATED: *9/7/88*

O/S William J. Fex DOC 883595

BY: *O/S G. Michael Broglin*
WARDEN -
SUPERINTENDENT -
DIRECTOR
G. Michael Broglin,
Superintendent

RECEIVED:

DATE: _____

_____

SUPPLEMENT TO FORM I, AGEEMENT ON DETAINERS

In the event that the prosecuting officer of a jurisdiction in which any such indictment, information, or complaint is pending institutes proceedings to obtain a final disposition thereof, you are statutorily entitled to the procedural protection provided in the Indiana Uniform Criminal Extradition Act, IC 35-33-10-3.

DATED: *9/7/88*

Name: *O/S William J. Fex, DOC 883595*

BY: *O/S F. Michael Broglin*
(Superintendent – Director)

Received: _____

Date: _____

_____

FIVE COPIES, IF ONLY ONE JURISDICTION WITHIN THE STATE INVOLVED HAS AN INDICTMENT, INFORMATION OR COMPLAINT PENDING. ADDITIONAL COPIES WILL BE NECESSARY FOR PROSECUTING OFFICIALS AND CLERKS OF COURT IF DETAINERS HAVE BEEN LODGED BY OTHER JURISDICTIONS WITHIN THE STATE INVOLVED. ONE COPY SHOULD BE RETAINED BY THE PRISONER. ONE SIGNED COPY SHOULD BE RETAINED BY THE WARDEN. SIGNED COPIES MUST BE SENT TO THE AGREEMENT ADMINISTRATOR OF THE STATE WHICH HAS THE PRISONER INCARCERATED, THE PROSECUTING OFFICIAL OF THE JURISDICTION WHICH PLACED THE DETAINER, AND THE CLERK OF THE COURT WHICH HAS JURISDICTION OVER THE MATTER. THE COPIES FOR THE PROSECUTING OFFICIALS AND THE COURT MUST BE TRANSMITTED BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED.

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: Joseph Filip, Prosec. Atty.,
12th Judicial District
Prose. Officer Jackson County
Court Jackson, Michigan

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

You are hereby notified that the undersigned in now imprisoned in *Westville Correctional Center* at *Westville, Indiana* and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

Cause 88-270 FY Armed Robbery
Assault with a Deadly Weapon
Felon in Possession of a Firearm

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the invalidation of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein, and waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which I now am confined.

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

DATED: *9/7/88* *O/S William J. Fex, DOC 883595*

(Inmate's name and number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings preliminary to trial in the receiving state which may take place before his delivery to the jurisdiction in which the indictment, information or complaint is pending. Failure to list the name and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is_____
NAME OF COUNSEL

whose address is_____
STREET. CITY AND STATE

B. I request the court to appoint counsel, *O/S William J. Fex, 883595* (Inmate's signature)

_____

Agreement on Detainers: Form III

IN THE CASE OF AN INMATE'S REQUEST FOR DISPOSITION UNDER ARTICLE III, COPIES OF THIS FORM SHOULD BE ATTACHED TO ALL COPIES OF FORM II. IN THE CASE OF A REQUEST INITIATED BY A PROSECUTOR UNDER ARTICLE IV, COPY OF THIS FORM SHOULD BE SENT TO THE PROSECUTOR UPON RECEIPT BY THE WARDEN OF FORM V. COPIES ALSO SHOULD BE SENT TO ALL OTHER PROSECUTORS IN THE SAME STATE WHO HAVE LODGED DETAINERS AGAINST THE INMATE. A COPY MAY BE GIVEN TO THE INMATE.

CERTIFICATE OF INMATE STATUS

RE: William Fex (inmate) 883595 (number)

Westville Correctional Center (institution) Westville, Indiana (location)

The [custodial authority] hereby certifies:

1. The term of commitment under which the prisoner above named is beig held: two six (6) year concurrent sentences
2. The time already served: 224 days as of 9/12/88
3. Time remaining to be served on the sentence: 1,743 days as of 9/12/88
4. The amount of good time earned: Presently in credit class I

5. The date of parole eligibility of the prisoner: 1/31/91
6. The decisions of the Board of Parole relating to the prisoner: (if additional space is needed use reverse side) N/A
7. Maximum expiration date under present sentence: 1/30/94
8. Detainers currently on file against this inmate from your state are as follows:

   Cause 88-270 FY Armed Robbery

   Assault with a Deadly Weapon

   Felon in Possession of a Firearm

DATED: *9/7/88*

Westville Correctional Center

BY: *O/S G. Michael Broglin*

Warden - Superintendent - Director

G. Michael Broglin, Superintendent

EXPLANATION OF RIGHTS UNDER ARTICLE IV
OF AGREEMENT ON DETAINERS

* * *

1. You have the right to challenge a request for temporary custody (Form V) in a court of law in this county.
2. You have the right to contest your delivery pursuant to a request for temporary custody (Form V) on the grounds that:
   a. the detainer documents on their face are not in order;
   b. you have not been charged with a crime in the requesting jurisdiction;
   c. you are not the person named in the detainer; or,
   d. you are not a fugitive.

If you wish to waive these statutory rights, you may do so by signing a Form V-A, a copy of which will be provided to you upon request.

By signing this page, you are only acknowledging that you have been offered a copy. You are not waiving any right that you have and are not agreeing to the request for temporary custody.

/s/ William J. Fex
Name

DOC 883595
Institution #

09-07-88
Date

/s/ Illegible
Witness

FORM V-A

PRISONER'S AGREEMENT TO TEMPORARY
TRANSFER OF CUSTODY

I, William Fex, 883595
(Prisoner's Full Name) (Institution #)

am currently incarcerated at Westville Correctional Center
(Institution)

P.O. Box 473, Westville, Indiana 46391
(Address)

Without admitting my guilt or innocence, I acknowledge that I am the same person named in the attached request for temporary custody (Form V). I understand that I am entitled to challenge that request for temporary custody in a court of law in this county. I have also been advised that the Governor may intercede in my behalf within thirty (30) days of the request for temporary custody. I wish to waive my right to challenge the request for temporary custody in a court of law, and agree to waive the thirty (30) day period so that I may be transferred as soon as possible.

I also agree that this agreement shall be a waiver of extradition with respect to any charge or proceeding contemplated hereby, and a waiver of extradition to the requesting state to serve any sentence imposed upon me, after completion of my term of imprisonment in this state.

/s/ William J. Fex DOC 883595
Signed

09-07-88
Dated

/s/ Illegible
Witness

Agreement on Detainers: Form IV

In the case of an inmate's request for disposition under Artile III, copies of this Form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor this Form should be completed after the Governor has indicated his approval of the request for temporary custody or after the expiration of the 30 day period. After expiration of the 30 day period, copies of this Form should then be sent to all officials who previously received copies of Form III. One copy also should be given to the inmate and one copy should be retained by the warden. Copies mailed to the prosecutor should be sent by certified or registered mail, return receipt requested.

OFFER TO DELIVER TEMPORARY CUSTODY

Date: *September 9, 1988*

TO: *Joseph Filip, Prosecuting Attorney* Prosecuting Officer
Jackson County, Jackson, Michigan

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

RE: *William Fex* Number: *883595*

Dear Sir:

Pursuant to the provisions of Article V of the Agreement on Detainers between this state and your state, the undersigned hereby offeres to deliver temporary custody of the above-named inmate to the appropriate authority in your

state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is (described in the attached inmate's request) (described in your request for custody of _____)

(The required Certificate of Inmate Status is enclosed.) (The required Certificate of Inmate Status was sent to you with our letter of _____).

If proceedings under Article IV(d) of the Agreement relative to extradition are indicated, an explanation is attached.

Indictments, informations or complaints charging the following offenses also are pending against the inmate in your state and you are hereby authorized to transfer the inmate to custod of appropriate authorities in these jurisdiction for purposes of disposing of these indictments, informations or complaints.

Offense	County or Other Jurisdiction
Cause 88-270 FY Armed Robbery	*Jackson County, Jackson, Michigan*
Assault with a Deadly Weapon	
Felon in Possession of a Firearm	

If you do not intend to bring the inmate to trial, will you please inform us as soon as possible?

Kindly acknowledge.

Westville Correctional Center

BY: *O/S G. Michael Broglin*

Warden - Superintendent - Director

G. Michael Broglin, Superintendent

P.O. Box 473, Westville, Indiana 46391

A. My counsel is _____
NAME OF COUNSEL

whose address is _____
STREET. CITY AND STATE

B. I request the court to appoint counsel, *O/S William J. Fex, 883595* (Inmate's signature)

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
Release Office

Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

State Form 2394R3

STATE OF INDIANA

DEPARTMENT OF CORRECTION

September 20, 1988 WESTVILLE CORRECTIONAL CENTER

Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Re: William Fex
883595

Enclosed please find the Interstate Agreement on Detainers requesting disposition on the stated cause(s) regarding the above captioned subject.

Sincerely,

/s/ Roy A. Smith
Roy A. Smith

Correctional Release Coordinator

Encl.

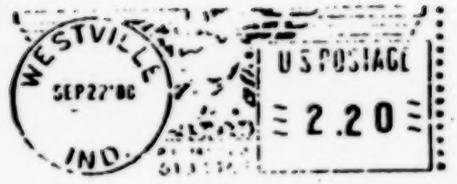
9-30-88

The Defendant has not been arraigned on this charge as of 9-30-88, in the 12th. District Court. If you have any questions, please call. 517-788-4260.

Rosalie Steffes
Deputy Clerk

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
RElease Office

CERTIFIED
P 956 212 004
MAIL



Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Return Receipt Requested

State Form 2384R2

MICHIGAN DEPARTMENT OF CORRECTIONS

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

AGREEMENT ON DETAINERS: Form VI

IN QUADRUPLICATE, ALL COPIES, SIGNED BY THE PROSECUTOR AND THE AGENT SHOULD BE SENT TO THE ADMINISTRATOR OF THEIR OWN STATE. AFTER SIGNING ALL COPIES, THE ADMINISTRATOR SHOULD RETAIN ONE FOR HIS FILES, SEND ONE TO THE WARDEN OF THE INSTITUTION IN WHICH THE PRISONER IS LOCATED AND RETURN TWO COPIES TO THE PROSECUTOR WHO WILL GIVE ONE TO THE AGENT FOR USE IN ESTABLISHING HIS AUTHORITY AND PLACE ONE IN HIS FILES.

TO: G. Peter Chatfield *Deputy*
(ADMINISTRATOR OF THE AGREEMENT ON DETAINERS)

William Fex is confined in
(INMATE)

Westville Correctional Center
(INSTITUTION)

P.O. Box 473, Westville, IN 46391-0473
(ADDRESS)

and will be taken into custody at the institution on 10-25-88

for return to this jurisdiction for trial on or about March 15, 1988

In accordance with Article V(b), I have designated Jason D. Hall

whose signature appears below as agent to return the prisoner.

/s/ Jerrold Schrotenboer
SIGNATURE: (Prosecuting Official)

/s/ Jason D. Hall
SIGNATURE: (Agent)

TO: Warden

In accordance with the above representation and the provisions of the Agreement on Detainers,

Jason D. Hall is hereby designated as agent for
(AGENT)

this state to return William Fex for trial.
(INMATE)

/s/ G. Peter Chatfield
Deputy Administrator
G. Peter Chatfield

MICHIGAN DEPARTMENT OF CORRECTIONS PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER

AGREEMENT ON DETAINERS: Form VII

IMPORTANT: THIS FORM SHOULD ONLY BE USED WHEN AN OFFER OF TEMPORARY CUSTODY HAS BEEN RECEIVED AS THE RESULT OF A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER. IF THE OFFER HAS BEEN RECEIVED BECAUSE ANOTHER PROSECUTOR IN YOUR STATE HAS INITIATED THE REQUEST, USE FORM VIII. COPIES OF FORM VII SHOULD BE SENT TO THE WARDEN, THE PRISONER, THE OTHER JURISDICTIONS IN YOUR STATE LISTED IN THE OFFER OF TEMPORARY CUSTODY, AND THE AGREEMENT ADMINISTRATOR OF THE STATE WHICH HAS THE PRISONER INCARCERATED. COPIES SHOULD BE RETAINED BY THE PERSON FILING THE ACCEPTANCE AND THE JUDGE WHO SIGNS IT.

TO: G. Michael Broglin Westville Correctional Center
(WARDEN, SUPERINTENDENT, DIRECTOR) (INSTITUTION)

P.O. Box 473, Westville, IN 46391-0463
(ADDRESS)

In response to your letter of 9/20/88 (DATE) and offer of temporary custody regarding William Fex (NAME OF PRISONER) who is presently under indictment, information, complaint in the County of Jackson (JURISDICTION) of which I am Prosecuting Attorney, (TITLE OF PROSECUTING OFFICER) please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer

within the time specified in Article III(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

COMMENTS: (If your jurisdiction is the only one named in the offer to temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.)

SIGNATURE

/s/ Joseph A. Filip

TITLE

Prosecuting Attorney

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action

in accordance with its terms and the provisions of the Agreement on Detainers.

DATED

10/20/88

SIGNATURE: (Judge)

/s/ James M. Justin

COURT:

Twelfth District Court

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF JACKSON

THE PEOPLE OF THE STATE
OF MICHIGAN

vs. FILE NO. 88-49555-FC

WILLIAM FEX,

Defendant.

_____/

[p. 3] THE COURT: In the matter of the People versus William Fex, File 88-49555-FC. Mr. Jacobs, I believe you had a motion in this matter?

MR. JACOBS: That's correct, Your Honor. It would be a motion under the Interstate Agreement on detainers as it applies to this particular matter. Mr. Fex is presently charged with an offense that occurred I believe it was December, 1987. After the offense occurred, it became apparent to the Jackson City Police that from information received from Indiana authorities that Mr. Fex was a suspect and he was in Indiana custody pending trial in the Indiana courts. Pursuant to the information a warrant was issued on February 29th of 1988, on the offense in this matter. Mr. Fex informs me he was sentenced on April 23, 1988, in Indiana to serve a term there, and in talking to the detective and the prosecutor apparently there was a detainer placed on him shortly thereafter sometime. The prosecutor's records do not indicate exactly when that would be.

Mr. Fex was first advised of a detainer and his rights under there and the right to disposition under the [p. 4] detainer on September 7, 1988, and when he signed the forms that have been attached to the prosecutor's answer those were signed and with the consent of the Indiana authorities at that time and the prison authorities there in Indiana. The dates in this matter become crucial. He signed the request for disposition on September 7, 1988. On September 9, 1988, there's a letter attached to the prosecutor's answer from Michael Broglin, Superintendent of the Westville Correctional Center to Joseph Filip it's dated September 9, 1988, regarding Mr. Fex and the documents that he signed. Now whether that was transmitted to Mr. Filip at that time, I don't know. There was another letter sent from the Indiana Prison authorities on September 20th or dated September 20, 1988, which was then apparently postmarked September 22, 1988, and appears to have been received here in Jackson on September 26, 1988.

Pursuant to the requests that were made, the prosecutor then filed an acceptance of custody on October 20, 1988, and the Defendant was picked up by the Jackson City Police from Indiana authorities and returned to this date on October 26, 1988.

Your Honor, there's three problems that we have in this matter concerning violations of the interstate agreement on detainers. The first is in regards to the case of *People versus Marshall* and I have that cite here.

[p. 5] MR. POLESKI: *Marshall* is cited in our answer, Your Honor, in the trial brief that we filed.

THE COURT: Thank you.

MR. JACOBS: Your Honor, in that case the Court held that a defendant complies with the notice requirements under Article III(a) of the Interstate Agreement on Detainers when he serves his disposition request to – and in that case it was a Wisconsin Prison authorities – in this case it would be the Indiana Prison authorities. Pursuant to the ruling in that case then September 7th would, in fact, be the date that the time limits start to run because that's when the request was signed and served on the Indiana Prison authorities. If we use that date, then the 180 days under the statute ended March 6, 1988, and this matter is past that date.

In addition, there's the problem that as to when the detainer was placed on there because the Indiana authorities have a requirement under the Interstate Agreement on Detainers once a detainer is placed to immediately inform the defendant of his right to Request Disposition. If, in fact, it was placed on him shortly after he was sentenced back in April of 1988, it was almost six months until he was informed of his rights by the Indiana authorities. That time should also be considered then because he could have made the request much sooner. [p. 6] It's our position that as far as the 180 days part of it that provision it is already expired.

The other problem that arises in this case is that even not considering the 180-day time limitation there is another time limitation set forth in the Interstate Agreement on Detainers and that one is 120 days from the time that the defendant is transferred into the jurisdiction of the receiving state.

In that case he was transferred here on October 26, 1988, and the 120 days expired back in February of this year.

Pursuant to that I would cite the case of *People versus Harlan*. In that case the defendant was transferred from another state to the Federal authorities in Milan, Michigan. When he was received at Milan the State of Michigan put a detainer on him and, of course, as the Kent County Prosecutor filed a detainer request for the Milan Prison officials. On March 10, 1981, the defendant was turned over to the State of Michigan state authorities and it goes on the 120-day limit began to run when the defendant was turned over to the Michigan authorities on March 10, 1981. The transfer of jurisdiction in this matter took place on October 26th. It's our position that pursuant to that case they have to try within 180 days – or 120 days.

I would also cite to the Court *People versus* [p. 7] *Webster* which is 130 Mich App 442, and again on that case the defendant was incarcerated on felony charges in Indiana. Shortly after his incarceration the defendant requested disposition of the Michigan charge pursuant to Article III(a), which is the same procedure that we have here. The defendant was returned to Michigan on January 12, 1982. Article IV(c) of the Interstate Agreement requires that trial be commenced within 120 days of arrival of the prisoner in the receiving state. In that case trial was not commenced and they held that the matter must be dismissed.

Your Honor, the prosecutor has filed an answer indicating that that section regarding the 120 days shouldn't apply to this matter as the Request was made by the

defendant and not by the prosecutor. I submit it makes – there is no logical reason to make a differentiation whether the prosecution makes a request or the defendant makes a request. When the prosecutor files his acceptance of custody, that, in fact, is the same thing as we're requesting to take his custody at this time. That was filed on October 20th. So even if the prosecutor argues that they made a Request on October 20th for the custody and he was returned on the 26th and the 120 days has expired.

Article V(c) indicates that if there are [p. 8] appropriate authorities shall refuse or fail to accept temporary custody or in the event that an action on the indictment or complaint if not brought to trial within the period provided in Article III or Article IV, hereof, the appropriate court of jurisdiction where the indictment has been pending shall be dismissed with prejudice. That Article indicates that the time limits apply, both time limits, both in Article III the 180 days and the time limit of 120 days after they receive custody. So it's our position that this matter must be dismissed as they have violated the terms of the Interstate Agreement on Detainer.

THE COURT: Thank you. Mr. Poleski?

MR. POLESKI: Thank you. I agree with Mr. Jacobs as far as the factual matters here are concerned. I disagree with him however as far as the application of the law is concerned.

We're dealing with two articles of the Interstate Agreement on Detainers. Under Article III the 180-day time period is triggered when the defendant files his Request for final disposition.

Under Article IV 120 days is triggered when the prosecutor files a request. The 120 days under Article IV is limited to Article IV, because in paragraph (c) it says this. "In respect of any proceeding made possible by 'this' Article, which is Article IV, trial shall be commenced [p. 9] within 120 days." The People are of the opinion and present to the Court that 120 days is not applicable in this case because the prosecutor did not Request the extradition of this gentleman under the Interstate Agreement on Detainers. The Request came from him rather than from the prosecuting authorities so Article IV does not apply at all.

Under Article III 180 days applies from the date on which the Request is received by the prosecuting attorney and the courts where the charges are filed. The 180 days would then have begun to run on September 26, 1988, when it is conceded the Request was received by both the prosecuting attorney's office and by the courts. The court file contains a block stamped letter that Mr. Jacobs makes reference to regarding being postmarked September 22nd and it's stamped September 26th. So it's the position of the People that September 26th is the triggering date for the 180 days. When 180 days is calculated from September 26th, we are within that date as of today.

I've cited in my trial brief authority for that. That exact question was presented to the Federal Courts and the Federal Courts have stated that it is the receipt of the Request by the prosecutor and the courts would charge there pending that charges the 180 days. On that basis we contend that both Articles do not bar the trial here. The 120 days does not apply and we are within 180 days of [p. 10] the appropriate time so on that basis, Your Honor, I

request that the motion be denied and we proceed to trial.

THE COURT: Thank you. Anything further, Mr. Jacobs?

MR. JACOBS: Your Honor, I would just in addition cite the case of *People versus Office* 126 Mich App 597. That case deals with the other problem that I referred to as to when the detainer was placed and when the defendant was advised of his rights under the detainer act. That case indicated that a letter sent to the Wisconsin State Prison constituted a detainer and that the failure of the Wisconsin prison authorities to advise the defendant of his rights immediately as required by the Interstate Agreement violated his rights under that Act and that in that matter the case then had to be dismissed. So I would additionally cite that.

The only other thing I would state, Your Honor –

THE COURT: Before we leave that, do you have anything to show when the Notice of Detainer was sent to the Indiana authorities?

MR. JACOBS: Your Honor, I've asked the prosecutor if he has that information and I have nothing.

MR. POLESKI: Our file does not – it might be in the appeals file downstairs. I didn't know that that was going to be an issue raised so I wasn't prepared to respond [p. 11] to that. I don't see where that triggers anything.

THE COURT: An appeal file?

MR. POLESKI: It would be held by our appellate division. Mr. Schrotenboer takes care of our interstate matters. It's not contained in the trial file so I don't have it here. I'm sure a detainer was filed but I don't know at this point. I didn't know that was going to be an issue this morning. I don't think it is an issue to be quite frank because the Interstate Agreement on Detainers only triggers one of two ways. The defendant requests for a final disposition of the prosecutor asks for temporary custody.

MR. JACOBS: Well, Your Honor, that is not what the Court of Appeals has ruled, however.

THE COURT: The Court has studied since receiving the pleadings of counsel and also gave some thought as to different time periods involved in this matter. In Article IV where the Request is initiated by the prosecuting attorney, the trial must start within 120 days after defendant is in the state. Where the prisoner makes the Request for final disposition, there's 180 days limitation, and it appears to the Court that the difference although there is no authority for it and have tried to find some reason for it if the prisoner makes the Request, the prosecution may not be ready to proceed and may need extra [p. 12] time to prepare for trial, therefore, the 180 days is allowed. If the prosecutor makes a Request to have the prisoner brought, it's assumed that he's ready to proceed and, therefore, the shorter period of 120 days. It's clear there is a different limitation of time depending on who initiates the Request. If the prisoner requests it, it's 120 days. If the prosecutor requests it, it's 180 days. In this case the matter was initiated here by the prisoner, so the Court would rule that the 180-day rule applies, and the Court is counting up the days here and apparently

has 182 days in this matter since the 26th of September received of '88 that the notice was received and that is by the way when the time is triggered by receipt of the notice by the prosecutor otherwise you'd have no way of knowing that the matter was in process and he could be depriving the People of their rights to prosecution without ever being aware that the matter was received so it makes sense for us to have that date to start our time running here leaves 182 days as the Court file reflects to today. We have a delay of seven days because the transcript would not be ready for the arraignment in circuit court and that seven-day delay was not the fault of the prosecutor nor the defendant but because the reporter was not able to get the transcript out in one week so that was a seven-day delay there which [p. 13] would take away from the 182 and leaves us with 175 days.

MR. POLESKI: Excuse me, Your Honor, does the Court calculate 182 days until today? I calculate 177 days until today. February only had 28 days this year.

THE COURT: That's right.

MR. POLESKI: Is my calculation in error?

THE COURT: Start off with September 26th of 1988.

MR. POLESKI: That's correct, sir.

THE COURT: I see my first mistake. I started off with nine days in September and that would not be correct. It's an error. We're under 177 days to today. Thank you.

Relative to the argument that there is a delay of notification, the Court really has nothing before it to say

that there was a delay so the Court will have to deny that part of the argument.

The Court has another trial in progress so we'll pick the jury in this matter and then recess and complete that trial. Hopefully the trial will be completed earlier today so that we can commence on our proofs late today.

MR. POLESKI: Your Honor, as a preliminary matter I'd ask if there are any names of defense witnesses that should be made available to the Court for the jury for voir dire.

MR. JACOBS: There are none, Your Honor.

* * *

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

June 21, 1991
No. 119192

v

WILLIAM FEX,
Defendant-Appellant.

Before: Neff, P.J., and Murphy and Marilyn Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and felony-firearm, MCL 750.227b; MSA 28.424(2). Defendant appeals and claims that charges must be dismissed due to a violation of the statute relating to the Interstate Agreement on Detainers (IAD), MCL 780.601; MSA 4.147(1). Defendant argues that the court lacked jurisdiction to try him since trial did not commence within the 180 days as required by this statute. We agree and reverse defendant's convictions.

The record reveals that on September 7, 1988, defendant was notified of a detainer and his rights pursuant to the IAD and on the same date he made his request for disposition to the Indiana prison authorities, where he was being held. Apparently, the Indiana prison authorities did not immediately forward the disposition request to the Jackson County Prosecutor's Office, as it was not

received by that office until September 26, 1988. Trial commenced on March 22, 1989, more than 180 days after defendant served his dispositional request on the Indiana authorities.

Michigan case law is clear that the commencement of the 180-day statutory period was triggered by the defendant's request for final disposition to the prison officials in this case. *People v Malone*, 177 Mich App 393, 399; 442 NW2d 658 (1989); *People v Marshall*, 170 Mich App 269, 276-277; 428 NW2d 39 (1988). Since the charges against defendant were not brought to trial within the requisite 180 days, and noting that no exceptions to the statutory requirement are claimed, dismissal of the charges against defendant is mandated. *People v Joseph Bowman*, ___ Mich App ___; ___ NW2d ___ (Docket No. 69453, decided May 7, 1991, 9:35 a.m.).

For the forgoing reasons, defendant's convictions and sentences are vacated and the charges dismissed.

Reversed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Marilyn Kelly

Michigan Supreme Court
Lansing, Michigan 48909

Opinion

FILED JANUARY 9, 1992

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff-Appellant,

v No. 91979

WILLIAM FEX,

Defendant-Appellee.

PER CURIAM

The Court of Appeals reversed this defendant's convictions on the ground that his trial did not take place within the 180-day time limit that is found in the Interstate Agreement on Detainers. We conclude that the Court of Appeals erred in its calculation of the 180-day period. We therefore reverse the judgment of the Court of Appeals and reinstate the judgment of the circuit court.

I

In December 1987, a robbery took place at a Jackson restaurant. Following an investigation, the defendant was charged with armed robbery and possession of a firearm

during the commission of that felony.[1] MCL 750.529, 750.227b; MSA 28.797, 28.424(2).

For an unrelated conviction, the defendant was incarcerated during 1988 at the Westville Correctional Center in Indiana. On September 7, 1988, he learned that Michigan authorities had placed a detainer on him as a result of the Jackson robbery. That day, he gave the Indiana prison authorities his request for final disposition of the robbery charge.

The Indiana authorities mailed the defendant's request on September 22, 1988. It was received by the Jackson County Prosecuting Attorney on September 26, 1988.

The defendant's trial began on March 22, 1989, when a jury was selected. March 22 was 177 days after the request was received in Jackson County, 181 days after it was mailed from Indiana, and 196 days after the defendant delivered his request to the Indiana authorities.

Prior to trial, the defendant had filed a written motion for dismissal under the Interstate Agreement on Detainers (IAD). MCL 780.601 *et seq.*; MSA 4.147(1) *et seq.* In his motion, he argued that the trial would not begin until after the 180-day limitation found in Article III(a) of the IAD.

[1] The defendant was also charged with assault with intent to murder, but that count was later dismissed. MCL 750.82; MSA 28.277.

The trial court heard and denied the motion on the first day of trial. The next day, the jury found the defendant guilty of armed robbery and felony-firearm.[2]

The defendant's convictions were reversed by the Court of Appeals.[3] The prosecutor has applied for leave to appeal.

II

Article III(a) of the IAD provides that a defendant "shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint. . . ." This case squarely presents the question whether the phrase "caused to be delivered" refers to the date when the request is given to prison authorities, or the date when the request is received by officials of the state where the prosecution is pending.

The IAD is several decades old and is written in a style that permits the interpretation urged by the

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[2] The defendant was sentenced to a term of from five to twenty years in prison for armed robbery. He also received the mandatory two-year consecutive term for felony-firearm.

[3] Unpublished opinion per curiam of the Court of Appeals, decided June 21, 1991 (Docket No. 119192).

defendant.[4] However we are persuaded that the proper interpretation is that urged by the prosecutor. In Article III(b), the IAD states a prisoner's duty to give or send the request to the prison authorities who are holding him. Similar language, which would indicate that the 180-day period runs from the date the request is given or sent to prison authorities, could easily have been employed in Article III(a), if the drafters had been so inclined. Instead, the period runs from the time when the prisoner has caused *delivery*, which is actual receipt.

This interpretation is consistent with the explanation offered by the United States Supreme Court in *Carchman v Nash*, 473 US 716, 721; 105 S Ct 3401; 87 L Ed 2d 516 (1985):

> "Specifically, Art. III requires the warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the indictment, information, or complaint upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, together with the certificate providing certain information about the prisoner's terms of confinement, to the appropriate

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[4] Article III(a) does not explicitly state that the notice must be received in order to trigger the 180-day period. Nor does it say that the prisoner must deliver his request. Instead, the statute requires the prisoner to have "caused" the delivery. Since Article III(b) specifically states that the prisoner is to give the request to the prison authorities (the prisoner is not personally to send the request to the state that seeks to prosecute), one could say that a prisoner who has fulfilled the obligation under Article III(b) has "caused" the delivery to the extent that it is within the prisoner's power to do so.

prosecuting official and court of the receiving State. The authorities in the receiving State *then* must bring the prisoner to trial within 180 days, absent good cause shown, or the court must dismiss the indictment, information, or complaint with prejudice, and the detainer will cease to be of any force or effect." (Emphasis supplied.)

A similar view is found in the report that the United States Senate Judiciary Committee presented when it recommended passage of the IAD:

> "Under the agreement, prison authorities are required to inform prisoners of all indictments, informations, or complaints on the basis of which detainers have been lodged against them by other jurisdictions. Prisoners may then request trial on such pending charges. Any request is transmitted through the warden to the proper official in the other jurisdiction who *then* has 180 days to bring the prisoner to trial." Senate Report No. 91-1356, 91st Congress, 2d Session, 3 US Code Cong & Admin News, 4864, 4865 (1970). (Emphasis supplied).

The rule requiring actual receipt of the prisoner's request has been adopted in the overwhelming majority of jurisdictions that have considered this question.[5] A typical discussion is found in *State v Moore*, 774 SW2d 590, 595 (Tenn, 1989), where the Tennessee Supreme Court explained:

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[5] An obvious purpose of an interstate agreement is to achieve a uniform body of law in the jurisdictions that have enacted the agreement. Absent sound reasons to the contrary, it is therefore sensible to interpret such an agreement in the same manner as a majority of other jurisdictions.

"In our opinion the receiving state cannot be charged with attempting to try the prisoner within 180 days until the receiving state has been given notice, by the prisoner or by officials of the sending state, of a request to proceed under Article III. Once that burden has been satisfied by the prisoner, the receiving state must, of course, comply with the terms of the Compact. There is a division of authority on this point. A few states have calculated the time from the date of the signing of the request for disposition, Form II, regardless of whether the receiving state receives the request or not. *See, e.g., McCallum v State*, 407 So 2d 865 (Ala Crim App, 1981), *People v Daily*, 46 Ill App 3d 195; 4 Ill Dec 756; 360 NE2d 1131 (1977), *Commonwealth v Martens*, 398 Mass 674; 500 NE2d 282 (1986), cert den 481 US 1041; 107 S Ct 1982; 95 L Ed 2d 821 (1987), *State v Wells*, 186 NJ Super 497; 453 A2d 236 (1982), and *People v [Pellegrino]*, 131 Misc 2d 118; 499 NYS2d 841 (1986).

"By far a greater number of cases, however, have reached the opposite conclusion, holding that the prosecutor or court in the receiving state cannot reasonably be expected to proceed until receipt of notice of the prisoner's request. *See, e.g., Young v Mabry*, 471 F Supp 553 (ED Ark, 1978), aff'd 596 F2d 339 (CA 8 [1979]), cert den 444 US 853; 100 S Ct 107; 62 L Ed 2d 69 (1979); *Beebe v Vaughn*, 430 F Supp 1220 (D Del, 1977); *Spears v State*, 280 Ark 577; 660 SW2d 913 (1983); *People v Bielecki*, 41 Colo App 256; 588 P2d 377 (1978); *State v Braswell*, 194 Conn 297; 481 A2d 413 (1984), cert den sub nom *Braswell v Connecticut*, 469 US 1112; 105 S Ct 793; 83 L Ed 2d 786 (1985); *State v Minnick*, 413 So 2d 168 (Fla App, 1982); *Pinnock v State*, 384 So 2d 738 (Fla App,

1980); *Thompson v State*, 186 Ga App 379; 367 SE2d 247 (1988); *Scrivener v State*, 441 NE2d 954 (Ind, 1982); *Holland v State*, 265 Ind 216; 352 NE2d 752 (1976); *Sweat v Darr*, 235 Kan 570; 684 P2d 347 (1984); *State v White*, 234 Kan 340; 673 P2d 1106 (1983); *Hines v State*, 58 Md App 637; 473 A2d 1335 (1984); *State v Walton*, 734 SW2d 502 (Mo [*en banc*], 1987); *State v McGann,*, 126 NH 316; 493 A2d 452 (1985); *State v Ternaku*, 156 NJ Super 30; 383 A2d 437 (1978); *State v Reitz*, 26 Ohio App 3d 1; 498 NE2d 163 (1984); *Commonwealth v Fisher*,451 Pa 102; 301 A2d 605 (1973); *State v Moosey*, 504 A2d 1001 (RI, 1986). *See generally* anno: 98 ALR[3d] 160, § [16][a] . . . .

> "In these cases it has been noted that it would be contrary to the public interest to start the 180 day period before actual receipt by the prosecutor of the prisoner's request and that this could not have been the legislative intent in enacting the Compact. Article III requires that the receiving state proceed after the prisoner '*shall have caused to be delivered* to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of his imprisonment and his request for final disposition' of the charges pending there. (Emphasis added)."

In the present case, the Court of Appeals cited three prior decisions for the rule that the 180-day statutory period is triggered when a defendant provides a request for final disposition to prison authorities. *People v Marshall*, 170 Mich App 269, 277; 428 NW2d 39 (1988); *People v Malone*, 177 Mich App 393, 398-399; 442 NW2d 658 (1989); *People v Bowman*, 189 Mich App 215, 218-219; 472 NW2d

645 (1991). However, an examination of these authorities demonstrates that they are of limited applicability.

In *Marshall*, a prisoner's initial request for final disposition was never delivered by prison authorities. Similarly, Bowman involved a complete failure to forward a prisoner's request.[6] The statement in Malone was dictum.[7]

In light of all these considerations, we are persuaded that the majority rule should be adopted in Michigan. We thus conclude that the Court of Appeals erred when it found that the defendant was not tried within the 180-day period stated in Article III(a) of the IAD.[8] We therefore reverse the judgment of the Court of Appeals and

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[6] Since Article III(b) states that prison authorities "shall promptly forward" a prisoner's request, we reserve the question how the IAD should be applied in a case where the request is never forwarded or where there is a very substantial delay in delivering the defendant's request.

[7] Under the analysis applied by the Court of Appeals in *Malone*, the defendant was timely tried without regard to whether the 180-day period was triggered by the defendant giving notice to prison authorities or by actual receipt in the state where the prosecution was pending.

[8] We have considered the defendant's other arguments, and are not persuaded that relief should be granted on those claims.

reinstate the judgment of the circuit court.[9] MCR 7.302 (F) (1).

/s/ James H. Brickley
/s/ Patricia J. Boyle
/s/ Robert Griffin
/s/ Conrad J. Mallett, Jr.
/s/ Dorothy Comstock Riley

STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 91979

WILLIAM FEX,

Defendant-Appellant.

BEFORE THE ENTIRE BENCH

LEVIN, J. (*dissenting*).

I adhere to the view that peremptory reversal should be reserved for cases in which the law is settled and no

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[9] The defendant's motion for bond pending appeal is therefore denied as moot.

factual assessment is required.[1] In the instant case, as indicated in the majority opinion, a legal assessment is required. Peremptory disposition is not appropriate.

The meaning of the phrase, "within one hundred and eighty days after [the prisoner] shall have caused to be delivered" to the prosecutor and the court, written notice and request for formal disposition (Interstate Agreement

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[1] *Roek v Chippewa Valley Bd of Ed*, 430 Mich 314, 322; 422 NW2d 680 (1988) (Levin, J., separate opinion); *Grames v Amerisure Ins Co*, 434 Mich 867, 868-875 (1990) (Levin, J., dissenting); *People v Little*, 434 Mich 752, 769-770; 456 NW2d 237 (Levin, J., dissenting); *People v Wrenn* 434 Mich 885, 885-886 (1990) (Levin, J., dissenting); *Harkins v Northwest Activity Ctr, Inc*, 434 Mich 896, 899 (1990) (Levin, J., dissenting); *Dep't of Social Services v American Commercial Liability Ins Co*, 435 Mich 508, 515; 460 NW2d 194 (1990) (Levin, J., separate opinion); *Yahr v Garcia*, 436 Mich 872 (1990) (Levin, J., dissenting); *Universal Underwriters Ins Co v Vallejo*, 436 Mich 872, 873-874 (1990) (Levin, dissenting); *People v Stephens*, 437 Mich 901, 901-908 (1991) (Levin, J., dissenting); *People v Berkey*, 437 Mich 40, 54; 467 NW2d 6 (1991) (Levin, J., dissenting); *Turner v Washtenaw Co Road Comm*, 437 Mich 35, 38-39; 467 NW2d 4 (1991) (Levin, J., separate opinion); *Lepior v Venice FWP*, 437 Mich 951, 952962 (1991) (Levin, J., dissenting).

See *Schweiker v Hansen*, 450 US 785, 791; 101 S Ct 1468; 67 L Ed 2d 685 (1981) (Marshall, J., dissenting) ("A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error"); *Leis v Flynt*, 439 US 438, 457-458; 99 S Ct 698; 58 L Ed 2d 717 (1979) (Stevens, J., dissenting) ("Summary reversal 'should be reserved for palpably clear cases of . . . error.' *Eaton v Tulsa*, 415 US 697, 707 [94 S Ct 1228; 39 L Ed 2d 693 (1974)] [Rehnquist, J., dissenting]").

on Detainers, MCL 780.601; MSA 4.147[1]), is not so free from doubt that peremptory disposition is appropriate.

The paraphrase of the quoted words by the United States Supreme Court, set forth in the majority opinion, who then has 180 days to bring the prisoner to trial,[2] does not indicate whether the 180 days begin to run when notice is given or sent by the prisoner, or, rather, when notice is received by the prosecutor and court. The integrity of, and judicial reliance on, congressional committee reports, has been questioned.[3] The weight of authority is surely worthy of consideration, but has not been thought to be controlling, or a sufficient reason, in itself, for decision.

/s/ Charles L. Levin

/s/ Michael F. Cavanagh

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[2] Slip op, p 4.

[3] "[W]e are a Government of laws not of committee reports." *Wisconsin Public Intervenor v Mortier*, 501 US ___; 111 S Ct 2476; 115 L Ed 2d 532, 553 (1991) (Scalia, J., concurring).

Supreme Court of the United States

No. 91-7873

William Fex,

Petitioner

v.

Michigan

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Michigan.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the Petition for writ of certiorari, it is ordered by this court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

May 18, 1992